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U.S. Department of Homeland Security

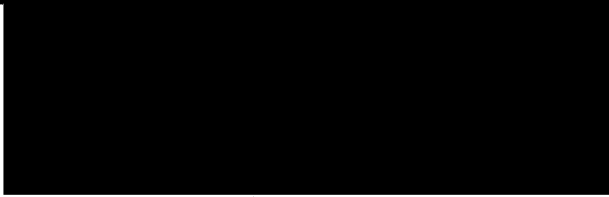
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

BCIS, AAO, 20 MASS, 3/F

Washington, D.C. 20536



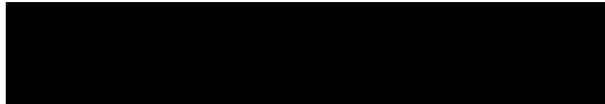
CI

File: WAC 01 282 56135

Office: CALIFORNIA SERVICE CENTER

Date: JUL 17 2003

IN RE: Petitioner:
Beneficiary:



Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

A handwritten signature in black ink, appearing to read "Sam H. [unclear]".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn, and the case will be remanded to him for entry of a new decision.

The petitioner is a [REDACTED] temple, seeking classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), in order to employ him as spiritual leader and monk.

The director denied the petition, finding that the petitioner failed to establish that it was a qualifying religious organization for the purpose of employing special immigrant religious workers.

On appeal, the petitioner provided additional documentation.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation,

professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner is a Buddhist temple¹ affiliated with the [REDACTED] denomination. The beneficiary is a native and citizen of Thailand, last admitted to the United States on November 2, 1999 as an R-1 religious worker. According to the Bureau's database, the beneficiary left the United States on January 13, 2003.

At issue in this proceeding is whether the petitioner qualifies as a bona fide nonprofit religious organization.

8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations; or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3).

To address this requirement, the petitioner submitted a letter from the Internal Revenue Service (IRS), showing that the Wat Buddhabakersfield was granted tax-exempt status under section 501(c)(3).

The director denied the petition, finding that the evidence shows that [REDACTED] located at [REDACTED] is exempt from federal tax, but the petitioner, [REDACTED] did not submit evidence to demonstrate that it qualifies as a non-profit organization.

On appeal, the petitioner provided the Bureau with evidence that the petitioner was formerly known as Wat Buddhabakersfield.

In review, the petitioner has established that it has the appropriate 501(c)(3) tax-exempt status. The petitioner has overcome the director's objection.

¹ Thai Buddhist temples are also known as wats.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation or vocation as defined in the regulations.

8 C.F.R. § 204.5(m) (2) states, in pertinent part, that:

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

8 C.F.R. § 204.5(m) (3) provides, in pertinent part, that:

Unless otherwise specified, each petition for a religious worker must be accompanied by:

* * *

(ii) A letter from an authorized official of the religious organization in the United States which . . . establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

Accordingly, this case shall be remanded back to the director so that he can request a letter from an authorized official of the petitioner's organization that clearly establishes that the alien has the required two years membership in the denomination and the required two years of experience in the religious vocation. The director should also request evidence that the beneficiary's position is a vocation.

After receipt and consideration of the additional evidence, the director should enter a new decision.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The director's decision is withdrawn. The case is remanded to the director for entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.